

No. 12334

**United States
Court of Appeals**
for the Ninth Circuit.

OSCAR A. MIRANDA, also known as Oscar
Miranda Arteche,

Appellant,

vs.

TOM C. CLARK, Attorney General of the United
States, UGO CARUSI, United States Com-
missioner of Immigration, and WILLIAM I.
CRANE, Officer in charge of Port of San Luis,
Arizona,

Appellees.

**Upon Appeal from the United States District Court
for the District of Arizona.**

Brief for the Appellant

ROSENBERG & LA VETTER
Attorneys for Appellant.

ACME-TUCSON

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PAUL P. O'BRIEN,

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JURISDICTION

This appeal involves a suit instituted against Tom C. Clark, Attorney General of the United States, Ugo Carusi, United States Commissioner of Immigration, and William I. Crane, Officer in Charge of Port of San Luis, Arizona, to obtain a declaratory judgment that the petitioner, Oscar A. Miranda, also known as Oscar Miranda Arteché, is a citizen of the United States brought pursuant to the provisions of Section 503 of the Nationality Act of 1940, 8 U.S.C.A. Sec. 903, and for an injunction restraining said defendants from arresting and deporting petitioner. (Plaintiff's Suit for Declaratory Judgment, T.R. 2).

The case was submitted upon an agreed statement of facts (T.R. 12), such facts so agreed upon being these, to-wit: Appellant was born in Los Angeles, California, on December 11, 1925. When he was five years old his parents took him to Mexico where he has continued to reside with them. He registered with the draft board in Tucson, Arizona, was classified 1-A, called for induction, and given permission to visit his parents in Mexico before induction. On the permission given him, he went to visit his parents, and on his return to the United States on the 25th day of September, 1946, he was prevented from entering the United States by the immigration authorities at San Luis, Arizona. He was held for a Board of Special inquiry, which after hearings ordered him

excluded on the ground that he had expatriated himself under the provisions of Section 401 (e) of the Nationality Act of 1940, by having voted in a primary election in a contest for City Mayor at San Luis, Sonora, Mexico. It was further agreed that the appellant was a minor at that time, being 20 years of age.

The Court found and concluded (T.R. 16) that the appellant had expatriated himself, and entered judgment (T.R. 19) revoking the restraining order issued theretofore.

Notice of appeal was timely filed August 1, 1949, pursuant to the provisions of Section 2107, Title 28 U.S.C.A. (T.R. 20). This Court has jurisdiction by virtue of the provisions of Section 1291, Title 28 U.S.C.A.

QUESTION PRESENTED

Whether plaintiff, who was born in the United States and taken during his minority to the country of his parents' origin and who became subject to a dual nationality, can expatriate himself by voting in a primary local election during his minority.

PROVISIONS OF CONSTITUTION AND STATUTES INVOLVED

Article XIV of the Amendments to the United States Constitution, Section 1, provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Section 401 of the Nationality Act of 1940, 54 Stat. 1168, 8 U.S.C.A. Sec. 801, contains the following provision: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: * * * (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory".

STATEMENT

We believe that the statement in this brief under "JURISDICTION" contains a statement of all facts necessary for a determination of this appeal. We will, however briefly summarize them.

Appellant was born on December 11, 1925, of Mexican parents in the City of Los Angeles, State of California, United States of America. When he was five years old, his parents took him to Mexico where he has continued to reside. On August 9, 1946, appellant registered under the Selective Training and Service Act of 1940, in Tucson, Arizona, U.S.A., and was classified as 1-A, and granted permission to visit his parents in San Luis, Mexico. On the 25th day of September, 1946, appellant attempted to enter the

United States of America at the Port of San Luis as an American citizen, but was prevented from so doing by the United States Immigration authorities, who contended that because appellant voted in a primary election in a contest for City Mayor at San Luis, Sonora, Mexico, at the age of 20 years, he had expatriated himself.

On November 4th, 1946, before appellant had attained his majority, he filed this Suit for Declaratory Judgment to determine his citizenship, pursuant to Section 903 of Title 8, U.S.C.A.; Section 503 of Nationality Act of 1940, (T.R. 2).

The case was submitted upon an agreed statement of facts, and Judgment was entered on June 22, 1949, that appellant had expatriated himself. (T.R. 19).

STATEMENT OF POINTS TO BE URGED

The appellant relies upon the following error as a basis for this appeal (T.R. 22):

1. The District Court erred in finding that the plaintiff forfeited his United States citizenship.

ARGUMENT

It is appellant's contention that a person born in the United States and taken during his minority to the country of his parents' origin and who became

subject to a dual nationality, does not lose his citizenship in the United States by voting in a contested local political election during his minority, if on attaining majority, he elects to return to the United States, assume his obligations, and retain his American citizenship.

The Circuit Court of Appeals, Ninth Circuit, has quite recently decided a case presenting a fact situation somewhat similar to the facts herein presented in the instant case.

Attorney General of the United States v. Ricketts, 165 F (2) 193.

In the above case, the person claiming American citizenship, had held public office in Canada during his minority, and he had upon reaching majority, voted at a provincial election in Alberta and had several times voted in that province at school and municipal elections.

As to the holding of public office during his minority, the Attorney General conceded that the mere holding of public office during minority was not an act of expatriation, since an infant is incapable of a binding choice.

With respect to the act of voting after reaching majority, it was said, “ * * * it is not contended that the act of voting amounts to expatriation as a matter

of law, but that it is strong evidence of an election to expatriate."

In the instant case, appellant was a minor at the time he voted at a primary election in a contest for City Mayor at San Luis, Sonora, Mexico, and we contend that he could not at that time merely by voting expatriate himself since he could not make a binding choice during minority. He had until he reached his majority in which to elect whether he desired to retain his American citizenship.

Perkins v. Elg, 307 U.S. 325, 59 S. Ct. 884,
83 L. Ed. 1320

United States ex rel. Baglivo v. Day, 28 F
(2) 44

CONCLUSION

We respectfully submit that:

1. A person born in the United States and taken during his minority to the country of his parents' origin and who became subject to a dual nationality, does not lose his citizenship in the United States by voting in a contested local political election during his minority, if on attaining majority he elects to return to the United States, assume his obligations and retain his American citizenship.

2. That appellant, Oscar A. Miranda, also known as Oscar Miranda Arteche, did not forfeit his citizen-

subject to a dual nationality, does not lose his citizenship in the United States by voting in a contested local political election during his minority, if on attaining majority, he elects to return to the United States, assume his obligations, and retain his American citizenship.

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2. That appellant, Oscar A. Miranda, also known as Oscar Miranda Arteché, did not forfeit his citizen-

ship and is entitled to enter the United States as an American citizen, and judgment of District Court should be reversed.

Dated: November — 1949.

Respectfully submitted,

ROSENBERG & LA VETTER

By *Mary Stella Rosen*
Attorneys for Appellant.